

House File 430 - Introduced

HOUSE FILE 430

BY SWEENEY

A BILL FOR

1 An Act providing for nuisance actions arising out of
2 agricultural uses and practices.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 657.12 Actions against agricultural
2 uses and agricultural practices.

3 1. *Legislative purpose.* The general assembly finds
4 that development in rural areas and changes in agricultural
5 technology, practices, and scale of operation have increasingly
6 tended to create conflicts between agricultural and other
7 uses of land. The general assembly believes that, to the
8 extent possible consistent with good public policy, the law
9 should not hamper agricultural production or the use of modern
10 agricultural technology. The general assembly therefore deems
11 it in the best interest of the state to establish limits on
12 the remedies available in those conflicts relating to the
13 agricultural use of land which reach the judicial system.

14 2. *Definitions.* As used in this section, unless the context
15 otherwise requires:

16 a. "*Agricultural practice*" means any activity associated
17 with an agricultural use.

18 b. "*Agricultural use*" means any of the following activities
19 conducted for the purpose of producing an income or livelihood:

20 (1) Crop or forage production.

21 (2) Keeping livestock.

22 (3) Beekeeping.

23 (4) Nursery, sod, or Christmas tree production.

24 (5) Floriculture.

25 (6) Aquaculture.

26 (7) Fur farming.

27 (8) Forest management.

28 (9) Enrolling land in a federal agricultural commodity
29 payment program or a federal or state agricultural land
30 conservation payment program, including but not limited to the
31 federal conservation reserve program.

32 (10) Any other use that the department of agriculture and
33 land stewardship, by rule, identifies as an agricultural use.

34 c. "*Litigation expenses*" means the sum of the costs,
35 disbursements, and expenses, including reasonable attorney,

1 expert witness, and engineering fees necessary to prepare for
2 or participate in an action in which an agricultural use or
3 agricultural practice is alleged to be a nuisance.

4 3. *Nuisance actions.*

5 a. (1) An agricultural use or an agricultural practice
6 shall not be found to be a nuisance if all of the following
7 apply:

8 (a) The agricultural use or agricultural practice alleged
9 to be a nuisance is conducted on, or on a public right-of-way
10 adjacent to, land that was in agricultural use without
11 substantial interruption before the plaintiff began the use of
12 property that the plaintiff alleges was interfered with by the
13 agricultural use or agricultural practice.

14 (b) The agricultural use or agricultural practice does not
15 present a substantial threat to public health or safety.

16 (2) This paragraph "a" applies without regard to whether a
17 change in agricultural use or agricultural practice is alleged
18 to have contributed to the nuisance.

19 b. In an action in which an agricultural use or an
20 agricultural practice is found to be a nuisance, the following
21 conditions apply:

22 (1) The relief granted shall not substantially restrict or
23 regulate the agricultural use or agricultural practice, unless
24 the agricultural use or agricultural practice is a substantial
25 threat to public health or safety.

26 (2) If a court orders the defendant to take any action to
27 mitigate the effects of the agricultural use or agricultural
28 practice found to be a nuisance, the court shall do all of the
29 following:

30 (a) Request public agencies having expertise in
31 agricultural matters to furnish the court with suggestions for
32 practices suitable to mitigate the effects of the agricultural
33 use or agricultural practice found to be a nuisance.

34 (b) Provide the defendant with a reasonable time to take
35 the action directed in the court's order. The time allowed for

1 the defendant to take the action shall not be less than one
2 year after the date of the order unless the agricultural use or
3 agricultural practice is a substantial threat to public health
4 or safety.

5 (3) If a court orders the defendant to take any action to
6 mitigate the effects of the agricultural use or agricultural
7 practice found to be a nuisance, the court shall not order the
8 defendant to take any action that substantially and adversely
9 affects the economic viability of the agricultural use, unless
10 the agricultural use or agricultural practice is a substantial
11 threat to public health or safety.

12 4. *Costs.* The court shall award litigation expenses to
13 the defendant in any action in which an agricultural use or
14 agricultural practice is alleged to be a nuisance if the
15 agricultural use or agricultural practice is not found to be a
16 nuisance. The litigation expenses shall be taxed as part of
17 the costs of the action.

18 EXPLANATION

19 This bill limits the right to bring a nuisance action
20 involving an agricultural use or agricultural practice.
21 The bill includes a provision declaring the importance
22 of agricultural production and use of modern agricultural
23 technology. The bill provides for agricultural uses and
24 practices associated with those uses, which include a range of
25 activities associated with crop and animal production. The
26 bill provides that an agricultural use or practice is not a
27 nuisance under two conditions: (1) the defendant's use or
28 practice predates the plaintiff's use; and (2) the defendant's
29 use or practice does not present a substantial threat to public
30 health or safety. The conditions apply without regard to
31 whether there has been a change in the use or practice.

32 The bill provides a number of restrictions upon a court
33 which orders relief if a nuisance is found. The court cannot
34 substantially restrict the use or practice unless the nuisance
35 is a substantial threat to the public health or safety. It

1 must consult with agencies having an expertise in agricultural
2 matters. It must provide the defendant with a reasonable time
3 to take the action, which cannot be less than a year. Finally,
4 the court cannot order a defendant to take any action that
5 substantially and adversely affects the economic viability of
6 the agricultural use, unless there is a substantial threat to
7 public health or safety.

8 The bill provides that if the defendant in such a nuisance
9 action prevails, the court must award the defendant litigation
10 expenses, including attorney fees and fees of expert witnesses.